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**REMARKS**

This response is intended as a full and complete response to the Office Action dated June 28, 2005. In view of the following discussion, the Applicant believes that all claims are in allowable form.

**IN THE SPECIFICATION**

Paragraphs [0024], [0029], [0030] and [0034] of the specification have been amended to properly describe the figures. Paragraphs [0029] and [0030] have been amended to respectively identify the mounting plate and the shaft with reference numerals 352 and 356. Paragraphs [0024] and [0034] have been amended to respectively identify the lead and the holes with reference numerals 202 and 284.

**IN THE DRAWINGS**

The drawings stand objected for failing to show reference numeral 284 and for containing one reference number designating two elements of the drawing. In response, the Applicant has attached a replacement sheet that includes Figure 2, as amended. Figure 2 has been amended to include the previously omitted reference numeral 284 identifying a plurality of holes. Additionally, reference numeral 284 has replaced 234 to correctly identify the holes.

Thus, the Applicant submits that the drawings are now in compliance. Accordingly, the Applicant respectfully requests the objection to the drawings be withdrawn.

**AMENDMENT TO CLAIMS 7-9**

The Applicant has amended claims 7-9 to correct the spelling of the word attachment.

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**CLAIM REJECTIONS**

**A. 35 U.S.C. §112 Claims 4-6 and 8-9**

Claims 4-6 and 8-9 stand rejected as being indefinite. In response, the Applicant has amended claims 4, and 5 to more clearly recite aspects of the invention. The Applicant disagrees with respect to claims 8-9.

With respect to claim 4, the phrase "lead alignment assembly" has been replaced with "lead amounting assembly" to prove proper antecedent basis. In claim 5, the phrase "lead mounting assembly" in the preamble has been replaced with "mounting arrangement" to give proper antecedent and the term "relative to" has been deleted and replaced with "on" before the phrase "an axis of rotation" to more clearly define the invention.

As for the lack of structural/functional relationship in claim 8, the Applicant respectfully disagrees. The term "shielding" describes the position relationship of the cage relative to the hammer. Moreover, numerous CCPA and Federal Circuit decisions have specifically approved of the use of functional limitations in claims and have assigned such functional limitations patentable weight. See, Irah H. Donner, *Patent Prosecution Practice and Procedure Before the U.S. Patent Office* 726-732 (3d ed. 1999). Notably, the CCPA specifically held a functional limitation to have patentable weight. See, *In re Land*, 151 USPQ 621, 635-36 (CCPA 1966); *In re Ludtke*, 169 USPQ 563, 566 (CCPA 1971) (stating that there is nothing prohibiting the use of functional language in a claim). See also, *In re Venezia*, 189 USPQ 149, 189 (CCPA 1976) ("there is nothing intrinsically wrong with the use of [functional language] in drafting patent claims. Indeed we have even recognized in the past the practical necessity for the use of functional language."). The Federal Circuit has specifically held a claim to be nonobvious over the prior art based on a functional limitation, where the only difference between the claim and the prior art was the functional limitation. See, *In re Mills*, 16 USPQ2d 1430, 1431-32 (Fed. Cir. 1990).

Here, the term "shielding" recited in claim 8 provides both a structural and functional relationship between the cage and hammer. "Shielding" denotes a position relationship between the cage and the hammer, *i.e.*, the cage has a

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geometric configuration and is in a position relative to the hammer in that enables the hammer to be shielded. "Shielding" also denotes a functional relationship between the cage and the hammer, *i.e.*, the cage shields the hammer. Thus, the Applicant submits that the term "shielding" properly recites a structural and functional relationship between the cage and hammer, which further limits the invention of claim 1.

Thus, the Applicant submits that dependent claim 4-6 and 8-9, fully satisfies the requirements of 35 U.S.C. §112. Accordingly, the Applicant respectfully requests the rejection be withdrawn.

**B. 35 U.S.C. §102(b) Claims 1-6, 8, 10-13 and 15**

Claim 1-6, 8, 10-13 and 15 stand rejected as being anticipated by United States Patent No. 5,375,664 issued December 27, 1994 to *McDowell, et al.* (hereinafter referred to as "*McDowell*"). In response, the Applicant has amended claim 1 to more clearly recite aspects of the invention. With respect to claim 10, the Applicant respectfully disagrees.

*McDowell* discloses a pile driving apparatus that can drive piles into the ground to form a support structure for a column member of a building in a quick and safe manner. (Col. 1, Lines 5-10, Col. 3, Lines 30-35). The apparatus disclosed in *McDowell* teaches a boom providing a fixed or stationary support for a lead while a hammer drives a needle pie. The lead is coupled to the boom of an excavator in a manner that permits movement of the lead relative the boom in solely one plane. (Col. 5, Lines 67-68, Col. 6, Lines 1-2). Therefore, *McDowell* does not teach or suggest a lead mounting assembly pivotably coupled to a lead and having a mounting arrangement configured to allow rotation of the lead in a first plane, and a hydraulic actuator coupled to the lead and the lead mounting assembly, the hydraulic actuator adapted to control the orientation of the lead relative to the lead mounting assembly in second plane that is different than the first plane, as recited by claim 1; or a lead mounting assembly coupling a lead to a boom, the lead mounting assembly having a boom mounting hole defining a first axis of rotation substantially perpendicular to the lead, wherein the lead is

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rotational relative to the lead mounting assembly about a second axis of rotation substantially perpendicular to the first axis of rotation, as recited by claim 10

Thus, the Applicant submits that 1 and 10, and all claims respectively depending therefrom, are patentable over *McDowell*. Accordingly, the Applicant respectfully requests the rejection be withdrawn and the claims allowed.

**C. 35 U.S.C. §103(a) Claim 9**

Claim 9 stands rejected as being unpatentable over *McDowell*. In response, the Applicant respectfully disagrees.

As discussed above, claim 9, which depends from claim 1, is patentable over *McDowell*. Furthermore, *McDowell* does not teach or suggest a cage that shields a hammer. Thus, *McDowell* can not teach or suggest a ladder integral to the cage. As such, adding a ladder to a cage could not possibly be a design choice in the light of *McDowell* because it does not teach or suggest either a cage or ladder.

Thus, the Applicant submits that claim 9 is patentable over *McDowell*. Accordingly, the Applicant respectfully requests the rejection be withdrawn and the claims allowed.

**D. Claims 7 and 14**

Claims 7 and 14 stand rejected as being unpatentable over *McDowell* in view of the United States Patent No. 4,333,541 issued June 8, 1982 to *Doty* (hereinafter referred to as "*Doty*"). In response, the Applicant respectfully disagrees.

*Doty* teaches that an elevation of a cylinder (in a vehicle mounted soil sampling device) may be adjusted by engaging cross pins to secure the overall position of a channel relative to a side plate. The section of which holes in which the cross pins are engaged to not limit the stroke (or travel) of the cylinder. Thus, *Doty* does not teach or suggest a plurality of the holes adapted to accept a pin for limiting the travel of a hammer. As such, it could not be obvious to one of the

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ordinary skill on the art to modify *McDowell* as taught or suggested by *Doty* in a manner that yields a plurality of holes for limiting the travel of the hammer.

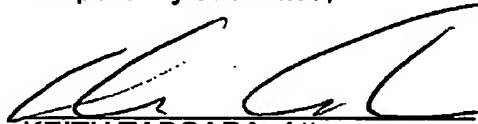
Thus, the Applicant submits that claims 7 and 14 are patentable over *McDowell* in view of *Doty*. Accordingly, the Applicant respectfully requests the rejection be withdrawn and the claims allowed.

**CONCLUSION**

Thus, the Applicant submits that all claims now pending are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issuance are earnestly solicited.

If, however, the Examiner believes that any unresolved issues still exist, it is requested that the Examiner telephone Mr. Keith Taboada at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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